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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120416016-2469-02]

RIN 0648-BB96

Atlantic Highly Migratory Species; Silky Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements the International Commission for the Conservation of Atlantic Tunas (ICCAT) Recommendation 11-08, which prohibits retaining, transshipping, or landing of silky sharks (Carcharhinus falciformis) caught in association with ICCAT fisheries. In order to facilitate domestic compliance and enforcement, NMFS also prohibits the storing, selling, and purchasing of the species. This rule primarily affects the commercial Atlantic highly migratory species (HMS) pelagic longline fishery for tuna and tuna-like species in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This rule does not affect commercial fishermen fishing for sharks with bottom longline, gillnet, or handgear, and it does not further affect recreational fishermen because harvesting silky sharks is already prohibited in the recreational fishery. This action implements the ICCAT recommendation, consistent with the Atlantic Tunas Convention Act (ATCA), and furthers domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Supporting documents, including the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA), and others, such as the Fishery Management Plans described below, may be downloaded from the Highly Migratory Species (HMS) Management Division website at [www.nmfs.noaa.gov/sfa/hms/](http://www.nmfs.noaa.gov/sfa/hms/).

These documents also are available by request at the telephone number below.

FOR FURTHER INFORMATION CONTACT: Peter Cooper or Karyl Brewster-Geisz by phone: 301-427-8503 or by fax: 301-713-1917.

SUPPLEMENTARY INFORMATION: The U.S. Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.* The U.S. Atlantic tuna and tuna-like species fisheries are managed under the dual authority of the Magnuson-Stevens Act and ATCA, 16 U.S.C. 971 *et seq.* Under ATCA, the Secretary of Commerce (Secretary) shall promulgate such regulations as may be necessary and appropriate to carry out ICCAT recommendations. ICCAT is responsible for the conservation of tuna and tuna-like species in the Atlantic Ocean and adjacent seas. ICCAT recommendations are binding on Contracting Parties, unless Parties object pursuant to the treaty. All ICCAT recommendations are available on the ICCAT website at <http://www.iccat.int/en/>. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries (AA), NOAA. The implementing regulations for Atlantic HMS are at 50 CFR part 635.

## Background

At the 22nd Regular Meeting of ICCAT in 2011, ICCAT adopted Recommendation 11-08 (the “Recommendation by ICCAT on the Conservation of Silky Sharks Caught in Association with ICCAT Fisheries”), which requires the United States to initiate rulemaking in order to fulfill

obligations as a Contracting Party to the Convention. Recommendation 11-08 requires fishing vessels operating in ICCAT-managed fisheries to release all silky sharks whether dead or alive, and prohibits retaining on board, transshipping, or landing any part or whole carcass of a silky shark (Carcharhinus falciformis). The ICCAT recommendation cites the fact that silky sharks were ranked as the species with the highest degree of vulnerability in ICCAT's 2010 ecological risk assessment for Atlantic sharks.

Further background information, including the need for these silky shark management measures, was provided in the preamble to the proposed rule (77 FR 37647, June 22, 2012) and is not repeated here.

NMFS prepared an EA/RIR/FRFA, which presents and analyzes anticipated environmental, social, and economic impacts of each alternative contained in this final rule. The complete list of alternatives and related analyses is provided in the EA/RIR/FRFA, and is not repeated here. A copy of the EA/RIR/FRFA prepared for this action is available from NMFS (see ADDRESSES).

In this final action, NMFS prohibits the retention of silky sharks on Atlantic HMS commercially-permitted vessels that have pelagic longline gear on board. As described in the Changes from the Proposed Rule section below, this final action also prohibits the retention of silky sharks on vessels that are issued both an HMS Charter/Headboat permit and a commercial shark permit, when tuna, swordfish or billfish are on board the vessel. Additionally, as described in the response to comments below and in the EA, NMFS prohibits the storing, selling, or purchasing of silky sharks to facilitate domestic compliance and enforcement.

Comments and Responses

NMFS received five written public comments on the proposed rule. There were no attendees at the public hearing held via conference call on July 9, 2012. Below, NMFS summarizes and responds to all comments made specifically on the proposed rule.

Comment 1: Given concerns about the vulnerability of silky sharks, retention of silky sharks should be prohibited in all HMS fisheries (commercial and recreational), and these species should be added to the prohibited species list.

Response: The purpose of this action is to implement ICCAT Recommendation 11-08, which requires the release of silky sharks "caught in association with ICCAT fisheries." Consistent with previous rulemakings (see response to comment 2, below), NMFS interprets "ICCAT fisheries" to mean fisheries for tuna and tuna-like species and to not include directed shark fisheries or other HMS fisheries. Therefore, the request to expand this requirement to other fisheries is outside the scope of this rulemaking. NMFS manages the U.S. directed commercial shark fisheries through a variety of domestic management measures consistent with the requirements of the Magnuson-Stevens Act. The commenter further requested that we add silky sharks to the prohibited species list under the Magnuson-Stevens Act. That request is also beyond the scope of this rulemaking to implement ICCAT Recommendation 11-08 under ATCA.

Comment 2: The proposed rule fails to satisfy the federal government's ICCAT obligations by continuing to allow silky sharks to be retained in fisheries other than the pelagic longline fishery, which are clearly included in the scope of ICCAT recommendations. Whether or not a fishery is targeting sharks is irrelevant. NMFS must consider all HMS fisheries that are allowed to retain tuna or tuna-like species to be ICCAT fisheries and must therefore prohibit retention of silky sharks in all of them. If the true intent is to ensure a reduction in silky shark

mortality and to ensure that ICCAT measures are enforced, then these prohibitions should apply to all HMS fisheries.

In the process of making the point above, one commenter incorrectly quoted the text of ICCAT Recommendation 11-08 as “prohibit retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of silky sharks taken in the Convention Area in association with ICCAT fisheries.”

Response: The relevant ICCAT recommendation was limited in scope to silky sharks caught in association with ICCAT-managed fisheries. Therefore, the requirement to release all silky sharks will be applied only to U.S. fisheries that target tuna and tuna-like species. This action would affect primarily commercial vessels with pelagic longline gear onboard that fish for tunas and tuna-like species. During the preparation of the final rule and in response to the comment, NMFS determined that, to make the action consistent with the August 29, 2011 action that implemented similar ICCAT Recommendations regarding certain hammerhead sharks and oceanic whitetip sharks (76 FR 53652), the regulatory language associated with this action needed to be revised to specify that the prohibition on retention also applies to a small number of vessels (currently five) that are issued both an HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel. This measure is necessary to ensure consistency across implementation of ICCAT recommendations and to enhance compliance and enforcement. These vessels, however, generally do not target or land silky sharks when they have tunas or tuna-like species on board. Harvesting silky sharks is already prohibited in the recreational fishery. Thus, while one or two additional silky sharks might have to be released in the specified HMS Charter/Headboat and commercial shark permit combination, inclusion of this permit combination in the “ICCAT fisheries” subject to this

rulemaking does not change the environmental or economic impacts described in the EA/RIR/IRFA prepared for the proposed action.

U.S. commercial shark fisheries using gear other than pelagic longline currently are managed through a variety of measures, including quotas and subquotas, seasons, retention limits, gear restrictions, and time/area closures. Although silky sharks could be caught on handgear, bottom longline, or gillnet gear, these gears directly target sharks and are not used in association with ICCAT fisheries. Additionally, while it is possible to catch tuna and tuna-like species using handgear, bottom longline, and gillnet gear, this rarely occurs when these gear types are used to target sharks. For example, data from observed bottom longline and gillnet trips show bycatch of two sailfish, no swordfish, and no managed tunas in 2010 (NMFS, 2011) and three bigeye tuna and one skipjack tuna in 2011 (Gulak, 2012; Hale et al., 2012).

Because there are three separate ICCAT shark recommendations with similar language, NMFS would like to clarify the differences in the text to reduce potential confusion. Under Recommendation 10-07, ICCAT parties are required to “prohibit retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of oceanic whitetip sharks in any fishery.” Under Recommendation 10-08, ICCAT parties are required to “prohibit retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of hammerhead sharks of the family *Sphyrnidae* (except for *Sphyrna tiburo*) taken in the Convention Area in association with ICCAT fisheries.” The language in these two recommendations differs from that in Recommendation 11-08, under which ICCAT parties “shall require fishing vessels flying their flag and operating in ICCAT managed fisheries to release all silky sharks whether dead or alive, and prohibit retaining on board, transshipping, or landing any part or whole carcass of silky shark.” Recommendation 11-08 for silky sharks does

not include language that prohibits storing, selling and purchasing any part of the shark species. Adding the prohibitions against storing, selling and purchasing silky sharks under the specified circumstances would, by making the regulations consistent with those in place for oceanic whitetip and scalloped, smooth and great hammerhead sharks, make the regulations easier to remember and thus would help fishermen and dealers and improve compliance. The addition would also allow for enforcement of the prohibition even in cases where the violation is not detected at sea or during landing. Finally, the extension of the prohibition against the sale and purchase should help to reduce the market for silky sharks and encourage compliance with the prohibition on retention.

Comment 3: NMFS' proposal to prohibit retention of silky sharks only when tuna or tuna-like species are also retained is flawed and may increase dead discards. A fisherman may catch and keep a silky shark, thus killing the shark. If the fisherman then catches a tuna or tuna-like species that he would prefer to keep, the fisherman will dump the shark overboard dead. The discard mortality would be significantly higher than if the shark had been released immediately after being captured.

Response: The action NMFS is taking is to prohibit the retention of silky sharks on Atlantic HMS commercially-permitted vessels in the commercial ICCAT fisheries, primarily affecting those that have pelagic longline gear on board. Under this action, in the scenario the commenter describes, a pelagic longline vessel would be required to release the silky shark regardless of what other species may be caught on the same trip because of the pelagic longline gear onboard. A vessel issued both an HMS Charter/Headboat permit and a commercial shark permit would not be able to retain both a tuna and a silky shark. This is a very small number of vessels, however, and very few such situations are expected to arise.

An analysis of the 2006-2010 HMS logbook data indicates that, on average, a total of 60 silky sharks are kept per year. An additional 1,417 silky sharks per year were caught (on average) and subsequently discarded (676 released alive and 742 discarded dead, on average). NMFS does not expect the actual number caught (1,477 per year on average) to change as a result of this action because fishermen participating in the pelagic longline fishery do not target or retain large numbers of silky sharks now and charter vessels typically do not target or land silky sharks when they have tunas or tuna-like species on board. NMFS estimates that, of the 60 silky sharks that are currently retained (on average), 17 (29 percent) would be released alive as a result of this rulemaking. The number of silky sharks discarded dead would increase slightly (from 742 to 785, on average) since pelagic longline vessels would no longer be able to retain any silky sharks, and one or two silky sharks might have to be released by vessels with the specified HMS Charter/Headboat and commercial shark permit combination. In addition, current regulations require that when HMS are released, they be released in a manner that will ensure maximum probability of survival, without removing the fish from the water. This is consistent with the provision of Recommendation 11-08 to promptly release silky sharks unharmed.

Comment 4: One commenter questioned NMFS' data on shark mortality, indicating it is antiquated, obsolete, and inaccurate, and stated that ICCAT is too lax and negligent in protection of species.

Response: The information NMFS used for the environmental and economic analyses for this action includes both pelagic longline observer program (POP) data and HMS logbook data from 2006 through 2010. Complete, finalized data from 2011 were not available at the time the draft EA/RIR/IRFA. NMFS conducted an analysis of the newly available 2011 data during the public comment period for this action and determined that, in general, the inclusion of the 2011



data would not substantially alter any of the data presented in the draft EA/RIR/IRFA, or result in any changes to the overall conclusions or preferred alternatives of the draft document.

NMFS has undertaken management measures for all Atlantic HMS species fully consistent with its legal obligations under the Magnuson-Stevens Act, ATCA, and other relevant statutes.

Comment 5: One commenter opposed using ICCAT as a vehicle for management of all sharks, especially large coastal sharks, until there is firm progress from other countries actively participating in pelagic shark conservation. Further, seeking shark recommendations at ICCAT circumvents U.S. domestic fisheries law, including the National Standards of the Magnuson-Stevens Act, and is contrary to the Food and Agriculture Organization of the United Nations (FAO) International Plan of Action, which “encourages the full use of dead sharks.”

Response: ATCA requires NMFS to implement recommendations adopted at ICCAT regardless of progress from other countries actively participating in pelagic shark conservation. Contracting Parties are required to implement all measures adopted by the commission in their waters. Issues concerning Contracting Parties’ non-compliance with ICCAT recommendations are addressed in the compliance committee. As described under Comment 1 above, NMFS does not manage the U.S. directed shark fishery for LCS or other shark species under ICCAT/ATCA.

The Shark Conservation Act of 2010 includes a provision that urges international fishery management organizations to which the United States is a member to adopt shark conservation measures, including measures to prohibit removal of any of the fins of a shark and discarding the carcass of the shark at sea.

For example, in the case of shortfin mako, where the United States’ contribution to the overall fishing mortality is small relative to other ICCAT Parties, developing effective

multilateral shark management measures can be an effective tool for ending overfishing of the entire shortfin mako stock. This approach is also consistent with National Standard 3 that states that to the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

The main objective of the FAO IPOA for the Conservation and Management of Sharks (IPOA) is to ensure the conservation and management of sharks and their long-term sustainable use. It calls on members to “strive to cooperate through regional and subregional fisheries organizations or arrangements, and other forms of cooperation, with a view to ensuring the sustainability of shark stocks, including, where appropriate, the development of subregional or regional shark plans.” The IPOA calls on nations to implement a National Plan of Action that among other things should aim to ensure that shark catches from directed and non-directed fisheries are sustainable as well as identify and provide special attention in particular to vulnerable or threatened shark stocks. The IPOA provision regarding the "full use of dead sharks" referenced by the commenter is also an attribute that the FAO IPOA recommends for inclusion in a nation's national plan of action. In 2001, the United States developed and implemented the U.S. National Plan of Action for the Conservation and Management of Sharks in consultation with stakeholders. While it may be appropriate to require full utilization of certain species, the Ecological Risk Assessment highlighted that silky sharks are vulnerable due to limited productivity and susceptible to capture in pelagic longline fisheries such that ICCAT adopted a ban on retention. NMFS acknowledges that while this ban on retention may lead to some dead discards, the release of additional live silky sharks is expected to assist with sustainability of the resource.

Comment 6: Neither NMFS nor ICCAT has conducted a domestic “species-specific” stock assessment for silky sharks. The justification for Recommendation 11-08 was based on an ecological risk assessment. NMFS needs to conduct a full benchmark stock assessment for silky sharks as soon as possible.

Response: ICCAT’s Standing Committee on Research and Statistics (SCRS) is responsible for conducting all ICCAT stock assessments and biological reviews for species included in the ICCAT Convention Area, and is authorized to study species other than tunas and tuna-like species under Article IV of the ICCAT Convention. The ICCAT plenary determines the schedule for stock assessments conducted by ICCAT.

While NMFS usually conducts shark stock assessments through the Southeast Data, Assessment, and Review (SEDAR) process, some pelagic sharks have been assessed by ICCAT’s SCRS and because the United States is only one of numerous ICCAT Parties that catch silky sharks, it would be appropriate for ICCAT’s SCRS to assess the status of the entire Atlantic silky shark stock so that the assessment can take into account all sources of mortality. While there have been no formal or peer-reviewed stock assessments for silky sharks, the SCRS ecological risk assessment is a valid basis for management decisions in situations where there is no formal assessment and is appropriate for management action under the Magnuson-Stevens Act.

Comment 7: This action would result in more regulatory discards, especially if any southern zones currently closed to pelagic longline gear are reopened. Silky sharks are found in the southern ranges around the Gulf Stream and in the Gulf of Mexico.

Response: Please see the response to Comment 3 above. NMFS is not currently proposing or considering re-opening any southern zones to pelagic longline gear. While the

comment is largely speculative, we note that any potential, future action to reopen an area or areas currently closed to HMS-permitted vessels with pelagic longline gear on board would include an analysis of the impacts of such proposed action on HMS and other species, including silky sharks, and the public would have opportunity to comment on any such proposal.

Comment 8: One commenter indicated that adult silky shark fins are worth approximately \$20-25 per pound ex-vessel, substantially higher than the \$11.11 value in the proposed rule analysis. The commenter also is concerned that the estimate of annual landings is low given the number of active pelagic longline vessels.

Response: The economic data and landings information used in the analysis for this action is as reported to NMFS via HMS logbooks during the 2006 through 2010 period. Reported economic data indicate that prices were \$11.11, not \$20-25 as the commenter stated. As landings information is tallied from HMS logbooks from all active fishing vessels, the estimate in this rule is the best available information.

#### Changes from the Proposed Rule

During the preparation of the final rule and in response to public comments about the scope of the proposed rule, NMFS determined that, to make the action consistent with the August 29, 2011 action that implemented similar ICCAT Recommendations regarding certain hammerhead sharks and oceanic whitetip sharks (76 FR 53652), and to align the rule with the regulated community's understanding of its application, the regulatory language associated with this action needed to be revised to specify that the prohibition on retention also applies to a small number of vessels (currently five) that are issued both an HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel. This measure is necessary to ensure consistency across implementation of ICCAT recommendations and to

enhance compliance and enforcement. These vessels, however, generally do not target or land silky sharks when they have tunas or tuna-like species on board. This modification does not change the environmental or economic impacts described in the EA/RIR/IRFA prepared for the proposed action.

#### Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the Magnuson-Stevens Act, and other applicable law.

NMFS prepared an environmental assessment for this rule that analyzes the impact of the action on the environment. In this action, NMFS prohibits retaining, transshipping, landing, storing, selling, or purchasing silky sharks in the commercial ICCAT fisheries, primarily the Atlantic pelagic longline fishery for tuna and tuna-like species. A copy of the environmental assessment is available from NMFS (see ADDRESSES).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

In compliance with section 604 of the Regulatory Flexibility Act (RFA), a Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS' responses to those comments, and a summary of the analyses completed to support the action. The full FRFA and analysis of economic and ecological impacts are available from NMFS (see ADDRESSES). A summary of the FRFA follows.

In compliance with section 604(a)(1) of the RFA, the purpose of this rulemaking is,

consistent with the Consolidated HMS FMP and its amendments, to implement ICCAT Recommendation 11-08 pursuant to ATCA and to achieve domestic management objectives under the Magnuson-Stevens Act. This rulemaking implements the 2011 silky shark recommendation in the Atlantic HMS fisheries that target tuna and tuna-like species because NMFS considers these fisheries to be ICCAT fisheries, which are the fisheries to which the recommendation specifically applies. The regulatory changes would affect the commercial ICCAT fisheries, primarily the Atlantic highly migratory species (HMS) pelagic longline fishery for tuna and tuna-like species in the Atlantic Ocean, including the Caribbean Sea and Gulf of Mexico. This action is necessary to implement ICCAT Recommendation 11-08 pursuant to ATCA. Under ATCA, the Secretary shall promulgate such regulations as may be necessary and appropriate to carry out ICCAT recommendations.

Adding prohibitions beyond those called for under Recommendation 11-08 would make this action consistent with the approach NMFS has taken for oceanic whitetip sharks and scalloped, smooth and great hammerhead sharks in the commercial pelagic longline fishery for tuna and tuna-like species. Adding the prohibitions against storing, selling and purchasing silky sharks under the specified circumstances would, by making the regulations consistent with those in place for oceanic whitetip and scalloped, smooth and great hammerhead sharks, make the regulations easier to remember and thus would help fishermen and dealers and improve compliance. The additions would enhance enforcement of the prohibition, particularly where prohibited retention is not initially detected at sea or during landing. Finally, the extension of the prohibition against the sale and purchase should help to reduce the market for silky sharks and encourage compliance with the prohibition on retention. Therefore, this action is intended to implement Recommendation 11-08 in a manner that meets our obligations under ICCAT and

ATCA consistent with our management authority for HMS fisheries under the Magnuson-Stevens Act and the Consolidated HMS FMP.

Section 604(a)(2) of the RFA requires agencies to summarize significant issues raised by the public in response to the IRFA, the agency's assessment of such issues, and a statement of any changes made as a result of the comments.

There were no direct public comments raising significant issues in response to the IRFA. However, three public comments were received regarding the potential for increased regulatory discards by prohibiting the retention of silky sharks in the commercial pelagic longline fishery.

NMFS calculated that this action would lead to a total estimated average annual increase in silky shark discards of 60 sharks, by converting average annual landings into regulatory discards. NMFS estimated in the IRFA that vessels that land silky sharks would incur collective annual economic losses of \$3,392 (\$1,489 for fins and \$1,903 for meat) from having to discard these sharks. Logbook data indicate that under existing regulations, between 2006 and 2010, 96 percent of silky sharks caught on pelagic longline gear were discarded. NMFS does not know the rationale behind these discards, but assumes that vessel operators are choosing to discard these fish either because of existing retention limits or economic reasons. Participants using pelagic longline gear typically target tuna and swordfish, which are both higher valued species than sharks. Due to the high urea content of sharks, retaining sharks on vessels with limited hold space may affect product quality of other higher-valued species. Also, vessels may be limited by current large coastal and pelagic shark retention limits, depending on what type of commercial shark permit they hold (directed or incidental), which may also be the cause of these discards. The rule also affects the small group of vessels issued both an HMS Charter/Headboat permit and a commercial shark permit. A very small number of vessels have such a permit

combination, however, and few instances of such tuna and silky shark catch are expected to arise. Thus, while one or two additional silky sharks might have to be released in the specified HMS Charter/Headboat and commercial shark permit combination, inclusion of this permit combination in the ICCAT fisheries subject to this rulemaking does not change the environmental or economic impacts described in the EA/RIR/IRFA prepared for the proposed action.

One commenter questioned the silky shark fin price per pound and annual estimate of silky shark landings in the analysis for the proposed rule. See Comment 9 and the corresponding response above and in Section 12 of the EA/RIR/IRFA.

No changes were made in the rule resulting from public comments in response to the IRFA.

Section 604(a)(3) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has defined a “small” fishing entity as one with average annual receipts of less than \$4.0 million; a small charter/party boat entity is one with average annual receipts of less than \$6.5 million; a small wholesale dealer as one with 100 or fewer employees; and a small seafood processor as one with 500 or fewer employees. This action would apply primarily to all participants in the Atlantic HMS commercial fisheries that have pelagic longline gear onboard, permitted shark dealers, and a small number of vessels (currently five) that are issued both an HMS Charter/Headboat permit and a commercial shark permit, when tuna, swordfish or billfish are on board the vessel. These vessels and dealers are all considered small fishing entities under the SBA definition. However, Charter/Headboat vessels generally do not target or land silky sharks when they have tunas or tuna-like species on board. As of October 2011, 242 pelagic longline



vessels held an Atlantic Tunas Longline permit, and 117 dealers held an Atlantic shark dealer permit. Including the vessels issued both HMS Charter/Headboat permits and commercial shark permits in the prohibition against silky shark retention does not affect this number because those vessels do not use longline gear.

Under section 604(a)(4) of the RFA, agencies are required to describe any new reporting, record-keeping and other compliance requirements. The action does not contain any new collection of information, reporting, record keeping, or other compliance requirements.

Under section 604(a)(5) of the RFA, agencies are required to describe any alternatives to the rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below and in Chapters 4 and 6 of the EA/RIR/FRFA. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c) (1)-(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, there are no alternatives discussed that fall under the first, second, and fourth categories described above. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the

Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category. As described below, NMFS analyzed several different alternatives in this proposed rulemaking and provides rationale for identifying the preferred alternatives to achieve the desired objective.

NMFS prepared a FRFA to analyze the impacts on small entities of the alternatives for implementing the ICCAT Recommendation 11-08 for all domestic fishing categories that target tuna and tuna-like species. Specifically, the FRFA assesses the impacts of the various alternatives on pelagic longline vessels, which are the only vessels that participate in the Atlantic HMS commercial fishery that target tuna and tuna-like species, all of which are considered small entities. NMFS considered and analyzed three alternatives including Alternative 1 (no action); Alternative 2 (implementing ICCAT Recommendation 11-08 in the commercial ICCAT fisheries); and Alternative 3 (implementing ICCAT Recommendation 11-08 and additional prohibitions against storing, selling, and purchasing of silky sharks in the commercial ICCAT fisheries).

Under the No Action Alternative, Alternative 1, there would be no economic impacts to HMS pelagic longline vessels fishing for tuna and tuna-like species. Under this alternative, commercial pelagic longline vessels that fish for tuna and tuna-like species that are also currently authorized to land silky sharks would be able to continue that practice. Commercial pelagic longline fishermen would continue to be able to land silky sharks and could potentially earn \$485 per vessel per year. Additionally, each vessel is predicted to earn a total of \$190,986 per year in revenue from swordfish and tuna (\$96,525 from swordfish and \$94,461 from tuna). Therefore, revenues from silky shark sales are minor (<1 percent) compared to each vessel's overall revenue. Alternative 1 would not implement ICCAT Recommendation 11-08 and, therefore, is inconsistent with NMFS' obligations to promulgate regulations, as necessary and

appropriate, to implement ICCAT recommendations. Because of this inconsistency, Alternative 1 is not a preferred alternative.

Under Alternative 2, pelagic longline vessel operators and owners could not retain, transship, or land silky sharks, consistent with ICCAT Recommendation 11-08. Thus, on average, each vessel would lose approximately \$485 annually in gross revenues, which is minor (<1 percent) compared to each vessel's overall revenue from swordfish and tunas (\$190,986 total revenues). Alternative 2 is limited in scope to 2011 ICCAT Recommendation 11-08 and establishes fewer prohibitions than Alternative 3 described below. For purposes of enforcement, Alternative 2 could be less effective than Alternative 3. Therefore, Alternative 2 is not a preferred alternative.

Under Alternative 3, pelagic longline vessel owners and operators could not retain, transship, land, sell, or store silky sharks, consistent with ICCAT Recommendation 11-08 and other domestic regulations. This alternative is essentially the same as Alternative 2 but would facilitate domestic compliance and enforcement. Thus, on average, each vessel would lose approximately \$485 annually in gross revenues, which is minor (<1 percent) compared to each vessel's overall revenue from swordfish and tunas (\$190,986 total revenues). NMFS prefers Alternative 3, because it would implement ICCAT Recommendation 11-08, would likely have minor ecological benefits, would have minor socioeconomic impacts on the pelagic longline fishery, and would facilitate compliance and enforcement. Additionally, Alternative 3 would be unlikely to change fishing practices or effort.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule,

and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules.

Copies of the compliance guide are available from NMFS (see ADDRESSES).

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: September 27, 2012

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Alan D. Risenhoover,

Director, Office of Sustainable Fisheries,

performing the functions and duties of the

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635-ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows

Authority: 16 U.S.C. 971 et seq.; 16 U.S.C. 1801 et seq.

2. In § 635.21, paragraph (c)(1)(ii) is revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(ii) Has pelagic longline gear on board, persons aboard that vessel may not possess, retain, transship, land, sell, or store silky sharks, oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks.

\* \* \* \* \*

3. In § 635.24, paragraph (a)(9) is revised to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

\* \* \* \* \*

(a) \* \* \*

(9) Notwithstanding other provisions in this subsection, possession, retention, transshipment, landing, sale, or storage of silky sharks, oceanic whitetip sharks, and scalloped, smooth, and great hammerhead sharks is prohibited on vessels issued a permit under this part that have pelagic longline gear on board or on vessels issued both an HMS Charter/Headboat permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

\* \* \* \* \*

4. In § 635.31, paragraph (c)(6) is revised to read as follows:

§ 635.31 Restrictions on sale and purchase.

\* \* \* \* \*

(c) \* \* \*

(6) A dealer issued a permit under this part may not purchase silky sharks, oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks from an owner or operator of a fishing vessel with pelagic longline gear on board. A dealer issued a permit under this part may not purchase silky sharks, oceanic whitetip sharks or scalloped, smooth, or great hammerhead sharks from the owner of a fishing vessel issued both an HMS Charter/Headboat

permit and a commercial shark permit when tuna, swordfish or billfish are on board the vessel, offloaded from the vessel, or being offloaded from the vessel.

\* \* \* \* \*

5. In § 635.71, paragraph (d)(19) is revised to read as follows:

§ 635.71 Prohibitions.

\* \* \* \* \*

(d) \* \* \*

(19) Retain, possess, transship, land, store, sell or purchase silky sharks, oceanic whitetip sharks, or scalloped, smooth, or great hammerhead sharks as specified in § 635.21(c)(1)(ii), § 635.22(a)(2), § 635.24, and § 635.31(c)(6).

\* \* \* \* \*

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